IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 607 OF 2006
IN
SUIT NO.2222 OF 1986.

Syndicate Bank. ... Plaintiff.
Versus.
M/s.Niralin Metalic Industries.
and others. ... Defendants.

Shri Avadhut Prabhu i/by M/s.Dhruva & Co.for the Plaintiff/Applicant in Chamber Summons.

CORAM : ABHAY S.OKA, J.

DATED : 21st August, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Plaintiff in support of the Chamber Summons.

2. The prayer made in the Chamber Summons is for granting leave to the Plaintiff to lead secondary evidence of the documents forming part of the list of documents (Annexure I) to the affidavit in support of the Chamber Summons.

3. In paragraph 4 of the affidavit in support of the Chamber Summons it is stated that the suit was originally filed by another Advocate. In paragraph 5 of the affidavit, it is stated that though several efforts were made to find out the papers in the records as well as in the godown of the Plaintiff, the same could not be

traced out. It is stated that an enquiry was made with the Advocate who had filed the suit. It is stated that the said Advocate informed the Plaintiff that all the original documents were returned to the Plaintiff. In paragraph 8, it is stated that the original documents are misplaced and are not traceable despite making several attempts to trace out the same.

4. There is no reply filed to the Chamber Summons though the Chamber Summons has been duly served to the Defendants.

5. The prayer in this Chamber Summons is not only for granting leave to the Plaintiff to lead secondary evidence but for marking the copies of the originals as exhibits. Though permission deserves to be granted to the Plaintiff to lead secondary evidence of the documents by producing zerox/photo copies of the documents, execution and contents of the said documents will have to be proved by the Plaintiff in accordance with the law of evidence. Therefore, later part of the prayer (a) cannot be granted.

6. Hence the following order is passed:

(i) The Plaintiff is granted leave to lead secondary evidence of the documents

referred to in the affidavit in support of the Chamber Summons by producing the photo copies/zerox copies thereof. However, the Plaintiff will have to lead evidence and prove the execution and contents of the said documents.

(ii) The Chamber Summons is disposed of accordingly.

(iii) The suit shall be set down for recording of evidence on 5th September 2007. It is made clear that no adjournment will be granted to the Plaintiff on the next date.

Judge.